

STATE OF NEW YORK

THE STATE TAX COMMISSION

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In the Matter of the Application :

of :

RUBEL CORPORATION :

for revision or refund of franchise  
taxes under Article 9-A of the Tax  
Law for the calendar years 1959,  
1961, 1962 and 1963. :

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Rubel Corporation, the taxpayer herein, having filed application for revision or refund of franchise taxes under Article 9-A of the Tax Law for the calendar years 1959, 1961, 1962 and 1963, and a hearing having been held in connection therewith at the office of the State Tax Commission in New York City on June 15, 1967, before William F. Sullivan, Hearing Officer of the Department of Taxation and Finance, at which hearing, Milton Wynn, Treasurer, and Harry Silverman, Comptroller, appeared personally and testified, together with David Rudin and George Liebler, Certified Public Accountants, and the record having been duly examined and considered by the State Tax Commission,

It is hereby found:

(1) That the taxpayer was incorporated under the laws of New York on April 2, 1925, and is engaged in manufacturing and selling of bulk and cube ice, and distributing of coal and fuel oil;

(2) That on the basis of franchise tax reports filed by the taxpayer and an examination made by field auditors of the Department of Taxation and Finance, taxes were reaudited and restated, or recomputed, as follows:

Calendar Year 1959

Entire Net Income	\$261,677.23
Business allocation	62.3963%
New York base	163,276.91
Tax at 5½%	8,980.23
Plus Subsidiary capital tax	5.09
Total Tax	\$ 8,985.32

Calendar Year 1961

Total Capital	\$2,104,163.77
Business allocation	61.72866%
New York base	1,298,872.00
Tax at 1 Mill	\$ 1,298.87

Calendar Year 1962

Entire Net Income	\$210,789.94
Business allocation	59.5942%
New York base	125,618.58
Tax at 5½%	\$ 6,909.02

Calendar Year 1963

Entire Net Income	\$65,255.84
Business allocation	53.6693%
New York base	35,022.35
Tax at 5½%	\$ 1,926.23

(3) That the taxes were reaudited and restated or recomputed on June 4, 1965 and application for revision or refund was filed on July 1, 1965;

(4) That on February 15, 1958 the taxpayer acquired 80% of the issued capital stock of International Radiant Corporation; that as of February 28, 1958 International Radiant Corporation was indebted to the taxpayer in the aggregate amount of \$289,090.63; that the taxpayer included International Radiant Corporation in its Federal consolidated income tax returns for the period March 1, 1958 through August 31, 1959; that on or about August 31, 1959 the taxpayer sold 5% of the stock, retaining 75% ownership so that International Radiant Corporation no longer qualified for inclusion in the taxpayer's Federal consolidated income tax return; that International Radiant Corporation went into bankruptcy in 1961;

(5) That the following amounts, representing advances to and stock investment in International Radiant Corporation, were deducted by the taxpayer in computing entire net income:

<u>Year</u>	<u>Amount</u>
1959	\$450,000.00
1960	100,000.00
1961	440,130.88
1962	15,290.74
1963	3,440.11

(6) That section 208 of the Tax Law reads, in part, as follows:

"3. The term 'subsidiary' means a corporation of which over fifty per centum of the number of shares of stock entitling the holders thereof to vote for the election of directors or trustees is owned by the taxpayer;"

"4. The term 'subsidiary capital' means investments in the stock of subsidiaries and any indebtedness from subsidiaries, whether or not evidenced by written instrument, on which interest is not claimed and deducted by the subsidiary for purposes of taxation under article nine-a \* \* \* \* of this chapter, \* \* \* \* \*."

"9. The term 'entire net income' means total net income from all sources, which shall be presumably the same as the entire taxable income which the taxpayer is required to report to the United States treasury department, \* \* \* \*, except as hereinafter provided, \* \* \* \* \*."

"(a) Entire net income shall not include:

"(1) income, gains and losses from subsidiary capital \* \* \* \* \* ."

Upon the foregoing findings and upon all of the evidence presented, it is hereby

DETERMINED:

(A) That International Radiant Corporation was a subsidiary of the taxpayer under the term "subsidiary" as defined in paragraph 3 of section 208 of the Tax Law;

(B) That the investment in and advances to International Radiant Corporation by the taxpayer constitute subsidiary capital as defined in paragraph 4 of section 208 of the Tax Law;

(C) That the advances to and stock investment in International Radiant Corporation, as shown at (5) above, are losses from subsidiary capital and are not includible in the term "entire net income" as defined in paragraph 9 of section 208 of the Tax Law;

(D) That the taxes for the calendar years 1959, 1961, 1962 and 1963 as shown at (2) above are confirmed as reaudited or recomputed;

(E) That the aforesaid taxes do not include any taxes or other charges which are not legally due.

Dated: Albany, New York

this 8th day of April 1969.

THE STATE TAX COMMISSION

  
COMMISSIONER

  
COMMISSIONER

  
COMMISSIONER

Mr. Edward Rook  
Mr. Nigel Wright  
Rubel Corporation

This is one of the pending corporation tax cases transferred to this office by the Law Bureau, on March 25, 1969.

I have reviewed the determination prepared by the Corporation Tax Bureau and I am in agreement with it.

/s/

NIGEL G. WRIGHT  
NIGEL WRIGHT  
Hearing Officer

March 31, 1969

NW:pw

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## DEPARTMENT OF TAXATION AND FINANCE

## MEMORANDUM

TO: Mr. Best  
FROM: Mr. Doran  
SUBJECT: Rubel Corporation

OFFICE Corporation Tax  
DATE July 31, 1967

RECEIVED  
DEPARTMENT OF  
TAXATION AND FINANCE  
JUL 31 1967  
LAW BUREAU

Attached are the file and a proposed determination in the above matter, which affirms the taxes for the calendar years 1959, 1961, 1962 and 1963 under Article 9-A of the Tax Law.

After your review, please send the file to the Tax Commission for consideration.

  
Director

Attachments